

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA

In Re:
Pro-Mark Services, Inc.
Debtor

Court File No.: 24-30167
Chapter 7 Case

AFFIDAVIT OF BRIAN BRAGG

I, Brian Bragg, of legal age, being first duly sworn upon oath, depose and say:

1. I am Consultant Claims-Bond for Hartford Accident and Indemnity Company (“Hartford”), and I make this Affidavit in support of Hartford’s Objection to the United States of America’s Motion to Approve Joint Settlement Agreement between the United State Air Force and Chapter 7 Trustee (the “Settlement Motion”), based upon my personal knowledge, and further state the facts set forth herein are true and correct to my best knowledge and belief.

2. As Hartford’s authorized representative, I am primarily responsible for the day-to-day handling of this matter, and I am familiar with the details associated therewith and with the amount of losses Hartford has incurred, and remains exposed to, in this matter.

3. Hartford, as Surety, issued the following payment and performance bonds (“Bonds”), attached hereto as **Exhibit A** and incorporated herein by reference, on behalf of Pro-Mark Services, Inc. (“Debtor”), as principal, and in favor of the United States Air Force, (the “Air Force”) as Obligee regarding the Debtor’s construction work at various Air Force Bases in Colorado, Nebraska, and North Dakota:

<u>Date of Bond</u>	<u>Bond Number</u>	<u>Contract Number</u>	<u>Bond Amount</u>
October 8, 2020	41BCSII6242	FA460016D6003/ FA460020F0192	\$6,802,376.00

October 14, 2021	41BCSIS1527	FA452820D0004/ FA452821F0091	\$7,860,882.00
September 15, 2022	41BCSIX7663	FA452820D0004/ FA452822F0133	\$173,481.00
September 28, 2022	41BCSIX7668	FA465917DC002/ FA465922F0059	\$453,164.00
September 28, 2022	41BCSIX7669	FA251720D0010/ FA254322F0058	\$1,426,283.00
	TOTAL		\$16,716,186.00

4. The Bonds guaranteed the Debtor's payment and performance obligations under the above-listed construction contracts between the Debtor and the Air Force, (the "Contracts").

5. As partial consideration for Hartford's issuance of Bonds and other consideration, on or about July 14, 2020, the Debtor and the non-debtor individual owners of the Debtor's business, (collectively, the "Indemnitors"), executed a General Indemnity Agreement ("GIA") in favor of Hartford. A copy of the GIA is attached hereto and incorporated by reference as **Exhibit B.**

6. The GIA executed by the Debtor and Indemnitors in favor of Hartford provides in relevant part at ¶ 9:

Assignment. [A]ll Indemnitors irrevocably assign, transfer, and convey the following to Hartford;

- (a) All rights of the indemnitors in, arising from, or related to Bonds or any or unbonded contracts, subcontracts and subcontract bonds and any extensions, modifications, alterations, or additions thereto; and
- (b) All right, title and interest of the Indemnitors in and to; (1) the work performed on any Bonded or unbonded contract; and (2) all supplies, tools, plant, machinery, inventory, equipment and materials; and (3) all materials purchased for or chargeable to any contract or Bond which may be in the process of manufacture, construction or transportation, or in storage anywhere; and (4) Books and Records, patent rights, copyrights, trademarks, and any and all bond claims or other affirmative claims; and (5) computers, computer systems, programs and licenses; and

- (c) All rights arising out of insurance policies which the indemnitor has an interest as a policyholder, beneficiary or otherwise; and
- (d) Any and all accounts receivable, accounts, chattel paper, documents of title, intangibles, claims, judgments, choses in action, purchase orders, bills of lading, federal or state tax refunds, tort claims, premiums, deferred payments, refunds, retainage or retainage account in which the Indemnitors have an interest.

GIA at ¶ 9.

7. Additionally, pursuant to ¶ 11 of the GIA, the Trust Fund provision states:

11. Trust Fund. If a Bond is Underwritten in connection with the performance of any contract, the entire contract price shall be dedicated to the satisfaction of the obligations of the Bond and this Agreement. All money paid or any securities, warrants, checks or evidences of debt given under contracts relating to or for which a Bond has been issued shall be impressed with a trust for the purpose of satisfying the obligations of the Bond Underwritten for said contract and this Agreement shall be used for no other purpose until all such obligations have been fully satisfied.

GIA at ¶ 11.

8. These terms of the GIA have not been modified.

9. On April 22, 2024, the Debtor filed a petition for relief under Chapter 7 of the United States Bankruptcy Code in the U.S. Bankruptcy Court for the District of North Dakota, and thereafter halted performance on the Air Force Contracts.

10. As it relates to Bonds executed on behalf of the Debtor for Air Force Contracts at Minot Air Force Base, Hartford has paid bond claims and incurred losses of at least \$646,329.66 and remains exposed to additional payment bond claims totaling at least \$213,736.

11. Hartford has further paid bond claims and incurred losses of at least \$183,819 for Bonds executed on behalf of the Debtor to perform Air Force Contracts at Offutt Air Force Base.

12. Hartford has attempted to correspond with the Air Force regarding takeover agreements to allow Hartford to complete the bonded Air Force Contract work, which efforts have not progressed due to the Air Force's positions as to requiring relief from the automatic bankruptcy stay under 11 U.S.C. § 362.

13. Hartford stands by ready to fulfill its obligations under the Bonds, subject to the Air Force complying with its respective obligations under the bonded Contracts, at law, and in equity.

14. Hartford intends to use bonded Contract funds, including the \$587,707.49 referenced in the Settlement Motion, to help satisfy bonded obligations, including those associated with the Air Force Contracts.

15. In addition to the performance bond claims associated with the \$16,716,186.00 in bonded Air Force contracts, Hartford faces remaining unquantified exposure on performance bonds executed for other United States government departments and agencies, including but not limited to the Indian Health Services, Space Force, and Army Corps of Engineers.

16. To date, Hartford has also received payment bond claims for the Debtor's non-Air Force bonded projects totaling at least \$1,538,615.90, of which \$665,616.90 in payment bond claims have been paid by Hartford and at least \$872,999.00 in payment bond claims remain unresolved.

17. To date, Hartford has not received any of the Debtor's earned, but unpaid, Contract funds from the Air Force.

Dated this 26 day of November 2024.



Brian Bragg

Consultant Claims-Bond

Hartford Accident and Indemnity Company

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

Subscribed and sworn to before me on November 26, 2024, by .

Witness my hand and official seal.

CRISTIAN MCCREARY
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20054022927
MY COMMISSION EXPIRES: 07/19/2025



Notary Public